

JAP:UAD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M-10-1116

- - - - - X

UNITED STATES OF AMERICA

- against -

KELLY DAVID,

Defendant.

- - - - - X

COMPLAINT AND
AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
ARREST WARRANT

(T. 8, U.S.C.,
§§ 1326(a) and
1326(b)(2))

EASTERN DISTRICT OF NEW YORK, SS:

GERARDO GALINDO, being duly sworn, deposes and states that he is a Deportation Officer with United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

On or about May 1, 2010, within the Eastern District of New York, the defendant KELLY DAVID, being an alien who had previously been arrested and convicted of an aggravated felony, to wit: Criminal Sale of a Controlled Substance in the Third Degree in violation of Section 220.39 subsection 01 of the New York State Penal Law, and was thereafter excluded and removed from the United States, and who had not made a re-application for admission to the United States to which the Secretary of the Department of Homeland Security, successor to the Attorney General of the United States, had expressly consented, was found in the United States.

(Title 8, United States Code, Sections 1326(a) and 1326(b) (2))

The source of your deponent's information and the grounds for her belief are as follows:^{1/}

1. I am a Deportation Officer with ICE and have been involved in the investigation of numerous cases involving the illegal re-entry of aliens. I am familiar with the facts and circumstances set forth below from my participation in the investigation; my review of the ICE investigative file, including the defendant's criminal history record; and from reports of other law enforcement officers involved in the investigation.

2. On or about May 1, 2010, the defendant, KELLY DAVID, was arrested by the New York City Police Department ("NYPD") in Brooklyn, New York. DAVID was arrested for Attempted Resisting Arrest in violation of Section 205.30 of the New York State Penal Law and Attempted Loitering for the purpose of gambling in violation of Section 240.35 subsection 02 of the New York State Penal Law.

3. Subsequent to the arrest, the NYPD ran a criminal history report and found that the defendant KELLY DAVID, a

^{1/} Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all of the relevant facts and circumstances of which I am aware.

citizen of Honduras, had been previously removed from the United States on May 14, 2009.

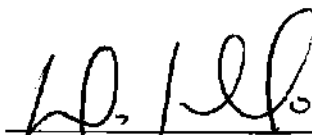
4. The NYPD notified ICE, and ICE officials determined that on or about December 5, 2007, DAVID had been convicted of Criminal Sale of a Controlled Substance in the Third Degree in violation of Section 220.39 subsection 01 of the New York State Penal Law, an aggravated felony offense.

5. ICE officials also determined that on or about May 14, 2009, DAVID had been removed from the United States pursuant to an Order of Removal dated April 23, 2009.

6. An ICE official with fingerprint analysis training compared the fingerprints taken in connection with the defendant's arrest underlying his December 5, 2007 conviction; the fingerprints taken in connection with the defendant's May 14, 2009 removal; and the fingerprints taken in connection with the defendant's May 1, 2010 arrest, and determined that all three sets of fingerprints belonged to the same individual.

7. A search of ICE records has revealed that there exists no request by the defendant for permission from either the United States Attorney General or the Secretary of the Department of Homeland Security to re-enter the United States after removal.

WHEREFORE, your deponent respectfully requests that the Court issue an arrest warrant so that the defendant KELLY DAVID may be dealt with according to law.



GERARDO GALINDO
Deportation Officer
United States Immigration and
Customs Enforcement

Sworn to before me this
24th day of September, 2010

THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK